

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
NE cor. Regester Avenue and * ZONING COMMISSIONER
Loch Hill Road *
6601 Loch Hill Road * OF BALTIMORE COUNTY
9th Election District *
4th Councilmanic District * CASE # 92-247-X
James J. O'Connor, Jr. *
Petitioner *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as 6601 Loch Hill Road.

The Petitioner/property owner, James J. O'Connor, Jr., seeks a determination by the Zoning Commissioner that the use of the property as a dwelling with two (2) apartments is nonconforming and, therefore, lawful. It is to be noted from the onset that the Petition was incorrectly filed as a Petition for Special Exception. After accepting the testimony in this case, it is clear that the Petition was intended to be filed as a Petition for Special Hearing for finding of a nonconforming use as described above. Thus, the Petition is hereby amended to conform with the evidence offered.

The Petitioner, James J. O'Connor, Jr., appeared, testified and was represented by Leonard J. Gutkoska, Esquire. Mr. O'Connor offered documentary evidence in support of his Petition, including the plat to accompany the Petition, received and marked as Petitioner's Exhibit No. 1.

Mr. O'Connor testified that he purchased the property in August of 1979. When negotiating for its purchase, he reviewed a copy of the listing contract which designated the dwelling thereon as a two apartment structure. Since the time of his purchase, the dwelling has continued in this use. Mr. O'Connor testified that he and his brother reside in the downstairs apartment and he has continuously rented the upstairs apartment. He

also described the physical layout of the premises. The first floor contains a living room, dining room, kitchen, bath and two bedrooms. The second floor, which is accessed by an internal vestibule within the kitchen on the first floor, offers a living room, kitchen, bath and two bedrooms. Although, Mr. O'Connor has no independent recollection of the property prior to his purchase, he presented hearsay testimony that certain neighbors surrounding the property have advised that the dwelling has long been used as a two apartment dwelling. Also, he noted his belief that the house was originally constructed in the mid 1940s as a two apartment dwelling and there has been no appreciable alteration in the design and layout of the structure since that time.

Numerous Protestants from the surrounding community of Loch Hill appeared and testified. These included Thomas G. Murphy, a resident of the area since 1979. He specifically objects to the increased traffic and parking which result from the apartment use and the unsightly appearance of the property. In his view, the dwelling is a nuisance to the community. He also testified that, during the occupancy of a Mrs. Barker during the late 1960s and 1970s, the apartment use was discontinued. Mr. Murphy testified that he attended grade school at the time and clearly recalls awaiting for the school bus near this property. Thus, he offered his recollection that the property has not been continuously used as a apartment.

Attorney James F.X. Cosgrove also testified in opposition to the request. Mr. Cosgrove is a title attorney and, although he did not appear in a representative capacity, he does oppose the granting of the variance. He offered the results of his title search which are shown within Protestant's Exhibit No. 2. This research notes that the property appreciated considerably from the time it was sold by Mrs. Barker in 1975 to the time of its

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sale to the present owner in 1979. In Mr. Cosgrove's view, the inordinate increase in sales price in these intervening 4 years reflects the fact that the property was reconverted to a 2 apartment dwelling.

Other testimony was offered by Protestants, Raymond Heil and John Murphy. Mr. Murphy's testimony is significant in that he also recalls waiting for a school bus near the site during his younger days and believes that Mrs. Barker alone resided therein in approximately 1970.

Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly of Maryland, the County Commissioners adopted a comprehensive set of zoning regulations. These original regulations provided for nonconforming uses. The statute read as follows:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then read:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; provided that upon any change from such nonconforming use to any other

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use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 18-76. The current effective regulation reads as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used. (B.C.Z.R., 1955; Bill No. 18, 1976)"

Although the Petitioner offered no specific authority, it was alleged by him that the operative date in considering the nonconforming use presented is 1955. Specifically, the Petitioner alleges that the zoning classification in effect prior to that time permitted construction of a 2 apartment dwelling at this location. Thus, he argues that if the use was in effect at that time, it is nonconforming.

Evidence presented in this case is clear that the property was used as a 2 apartment dwelling prior to that date. Specifically, reliance is placed upon Petitioner's Exhibit No. 2, a copy of the transcript of a

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proceeding in the Circuit Court of Baltimore County in December of 1950. At that time, evidence was offered in that case regarding the use of the property. Specifically, testimony was given that the dwelling existed as a 2 apartment structure.

Having satisfied this test, the Petitioner must then comply with the balance of the requirement in determining a lawful nonconforming use as found in Section 104.1 of the B.C.Z.R. Specifically, the Petitioner has the burden of adducing testimony that the nonconforming use continued and that there was no abandonment or discontinuance thereof for a period of 1 year or more.

In reviewing the evidence presented, it is clear that the Petitioner has not satisfied this burden. He presented no creditable and reliable testimony that the property has been used in a nonconforming use continuously since 1950. Although, it is clear that the dwelling was originally constructed as a 2 apartment structure and has been used in that manner since the Petitioner's purchase in 1979, there was no reliable testimony presented regarding the use of the property in the intervening years. Particularly in view of the testimony offered by Mr. John Murphy and Mr. Thomas Murphy, I am satisfied that the use was not continuous during the period of Mrs. Barker's ownership of the property. In that she owned the property from 1952 through 1975, I am persuaded that the Petitioner has not satisfied his burden. Thus, the Petition must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 30th day of January, 1992 that the Petition for Special Exception

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tion for permission to use the herein described property for use as a nonconforming two apartment dwelling, in accordance with Petitioner's Exhibit No. 1, be and is hereby DENIED.

LES:mmn

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

ORDER RECEIVED
Date
By

-6-

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

January 29, 1992

Leonard J. Gutkoska, Esquire
204 E. Joppa Road, LL4
Towson, Maryland 21204

RE: Petition for Special Exception
Case #92-247-X
James J. O'Connor, Jr.

Dear Mr. Gutkoska:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Exception has been denied in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,
Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for nonconforming use of detached house
Hill Rd. as a dwelling with two apartments

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

(Type or Print Name)

Signature

(Type or Print Name)

Signature

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

6601 Loch Hill Rd. 337-2985

Baltimore, Md.

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Attorney's Telephone No.: 337-7221

Phone No.



ESTIMATED LENGTH OF HEARING - 1/2HR. 6HR.
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS
OTHER
REVIEWED BY: LG DATE: 2/2/92

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ZONING DESCRIPTION
6601 Loch Hill Road

Beginning at a point on the east side of Loch Hill Road which is 50' wide at the north east corner of the nearest improved intersecting street, Regester Avenue which is 50' wide. Being Lot #1, in the subdivision of Loch Hill as recorded in Baltimore County Plat Book #13, Folio #74, containing 6650 square feet, more or less. Also known as 6601 Loch Hill Road and located in the 9th Election District and 4th Council District.

12/10/91

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CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 12/10/91
Posted for: James J. O'Connor, Jr.
Petitioner: James J. O'Connor, Jr.
Location of property: 6601 Loch Hill Road
Location of Sign: 6601 Loch Hill Road
Remarks: Special Exception to approve the nonconforming use of 6601 Loch Hill Road as a dwelling with two apartments.
Posted by: Lawrence E. Schmidt
Number of Signs: 2

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/10/91
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/10/91, 1991.

THE JEFFERSONIAN,

S. Zeke Olson
Publisher

\$78.67

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TOWSON TIMES,

S. Zeke Olson
Publisher

\$78.67

NOTICE OF HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:
Case Number: 92-247-X
NE Corner Regester Avenue and Loch Hill Road
6601 Loch Hill Road
9th Election District
4th Council District
Petitioner(s): James J. O'Connor, Jr.
Hearing Date: Wednesday, Jan. 22, 1992 at 11:00 a.m.
Special Exception: to approve the nonconforming use of 6601 Loch Hill Road as a dwelling with two apartments.
LAWRENCE E. SCHMIDT, Zoning Commissioner of Baltimore County
TJ/1017 January 2

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\$78.67

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number

Please Make Checks Payable To: Baltimore County

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

DECEMBER 17, 1991

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 92-247-X
NE Corner Regester Avenue and Loch Hill Road
6601 Loch Hill Road
9th Election District - 4th Council District
Petitioner(s): James J. O'Connor, Jr.
HEARING: WEDNESDAY, JANUARY 22, 1992 at 11:00 a.m.

Special Exception to approve the nonconforming use of 6601 Loch Hill Road as a dwelling with two apartments.

Lawrence E. Schmidt
Lawrence E. Schmidt

Zoning Commissioner of Baltimore County

cc: James J. O'Connor, Jr.
Leonard Gutkowski, Esq.

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

January 3, 1991

Mr. and Mrs. James J. O'Connor, Jr.
6601 Loch Hill Road
Baltimore, Maryland 21239

RE: Case No. C-91-1051
6601 Loch Hill Road
9th Election District

Dear Mr. and Mrs. O'Connor:

A complaint has been filed with this office in reference to an illegal conversion (three apartments) at the above location. Our records indicate that the property lot size is 6,084 square feet. This lot size is not sufficient for two apartments not to mention three, per Section 402.2 of the Baltimore County Zoning Regulations (copy enclosed). Therefore, the only recourse for you, as property owner, would be to bring this property into compliance by converting it back into a single family dwelling or file for a special hearing to show that this dwelling was converted into three apartments prior to 1945.

Failure to comply by February 14, 1991 will result in the issuance of a citation, wherein, you are subject to a civil penalty of \$200.00 per day, per violation and each day shall be considered a separate violation.

If you have any questions, please contact me at 887-8092.

Sincerely,

Kevin R. Connor
KEVIN R. CONNOR
Zoning Inspector

KRC:ljs
Enclosure

DISTRICT COURT OF MARYLAND FOR Baltimore County
Located at 111 Allegheny Ave 21204
Citation 91-517

STATE OF MARYLAND
OR
rnold Jablon - Zoning Commissioner vs. James J. and Mildred O. O'Connor

TRIAL OR HEARING NOTICE

TO: James J. and Mildred O. O'Connor
6601 Loch Hill Rd
Balto MD 21239

- ☐ Notice of intent to defend has been filed by _____ in the above case. The trial is set for Oct 30, 1991 at 1:30 PM. You must be prepared for trial on this date.
- ☐ The trial date in the above case has been changed to _____ at _____.
- ☐ You are hereby summoned to appear at the above location.
- ☐ Hearing on Motion to be held _____ at _____.
- ☐ If Motion results in trial, trial will be held the same day or will be rescheduled.
- ☐ Continuation of oral examination to be held on _____ at _____.
- ☐ Case has been continued to an indefinite date. You will be notified.

9/13/91 Date hh Cnt

- Copies mailed to:
- (1) Kevin Connor, Zoning Inspector
111 West Chesapeake Ave
Towson MD 21204
 - (2) Thomas Farley Esq.
Office of Law
Counsel for Balto Co
 - (3) Kent Matsumoto
Ober, Kaler, Grimes & Schriber
125 E Baltimore St
Balto MD 21202
 - (4)

DC 7 (Rev. 7/84) SEP 16 1991
(This form replaces DC 261.)

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

DATE: 1-17-92

James J. O'Connor, Jr.
6601 Loch Hill Road
Baltimore, Maryland 21239

RE: CASE NUMBER: 92-247-X
NE Corner Regester Avenue and Loch Hill Road
6601 Loch Hill Road
9th Election District - 4th Council District
Petitioner(s): James J. O'Connor, Jr.

Dear Petitioner(s):

Please be advised that \$103.67 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE ZONING SIGN & POST SET(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 118, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

REKOLD JABLON
DIRECTOR

cc: Leonard Gutkowski, Esq.

THIS DEED, Made this 17 day of August, in the year One Thousand Nine Hundred and Seventy-Nine, by and between JOHN T. LONG, III and MARY S. LONG, his wife, of Baltimore County, State of Maryland, parties of the first part, and JAMES J. O'CONNOR JR., and MILDRED O. O'CONNOR, his wife, - - - - -

parties of the second part.
WITNESSETH, That for and in consideration of the sum of \$ 75,000.00, and other good and valuable considerations, this day paid, the receipt whereof is hereby acknowledged, the said JOHN T. LONG, III and MARY S. LONG, his wife, do hereby grant and convey unto the said parties of the second part, as tenants by the entireties, their assigns, and unto the survivor of them, his or her heirs, personal representatives and assigns, - - - - -

in fee simple, all that lot or parcel of ground situate, lying and being in Baltimore County, State of Maryland, and described as follows, to wit:

BEING known and designated as Lot No. 1, as shown on a Plat entitled, "Loch Hill", which Plat is recorded among the Land Records of Baltimore County in Plat Book C.H.K. No. 13 folio 74. The improvements thereon are now known as 6601 Loch Hill Road.

BEING all and the same lot or parcel of ground which by Deed dated April 4, 1975, and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5519 folio 613, was granted and conveyed by Ethie M. Barker to John T. Long, III and Mary S. Long, his wife, the within Grantors.

TOGETHER WITH the buildings and improvements thereupon erected, made or being; and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or appertaining.

TO HAVE AND TO HOLD said lot of ground and premises above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said parties of the second part, as tenants by the entireties, their assigns, and unto the survivor of them, his or her heirs, personal representatives and assigns,

in fee simple.

AND THE SAID parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that they will warrant specially the property granted; and that they will execute such further assurances of the same as may be requisite.

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On behalf of the Loch Hill Community Association, we formally express our opposition to any variance or special exception to be granted to the O'Connor property at 6601 Loch Hill Road. Our community is comprised of 144 family dwellings of which 143 are single family dwellings. The exception being the O'Connor property. An apartment dwelling is out of character with our neighborhood and against Baltimore County zoning regulations. Litigation is currently pending against Mr. O'Connor for violation of zoning regulations. This property is located at the eastern entrance to our community and its current illegal use as an apartment dwelling has the potential to decrease property values. The fact that the owner does not live at this property increases the chances of property degeneration. The presence of transient renters causes further concern. We have witnessed on numerous occasions, garbage being placed out for pickup in plastic bags several days before or after scheduled pickup. We conclude that this is either of ignorance or lack of concern by the tenants. This trash is subject to infiltration by raccoons, rodents, or stray dogs.

The increased number of vehicles parked at this dwelling causes problems with parking in this area and blocks sight lines for traffic on Loch Hill Road and Regester Avenue. This raises our concern for public safety. At present, this property is unkempt and unsightly, which is a nuisance as well.

There is no demand or need for rental properties in this area. Within two blocks across Loch Raven Boulevard exists the Hillendale Gate and the Tall Oaks apartment complexes. Loch Raven Boulevard serves as a line of demarcation which we feel should not be crossed and opened for further apartment dwelling use.

We expect the zoning laws to be enforced by Baltimore County for the good of the Loch Hill Community and not to be altered or waived for the special interest of one individual who has no vested interest in the common good of the Loch Hill Community.

We hereby present a petition with signatures from residents of the Loch Hill Community expressing their opposition to Mr. O'Connor's request. In addition, we present for your review a copy of correspondence from Kevin Connor, a zoning inspector for Baltimore County, and a copy of the trial notification pending against Mr. O'Connor. Please review these photos of the property in question as well.

Thank you for your consideration in these matters and we respectfully request that you rule against Mr. O'Connor's request and in favor of the overwhelming sentiment of the Loch Hill Community.

Notation on p. 1

TITLE/ASSESSMENT SUMMARY OF
6601 LOCH HILL ROAD
BALTIMORE COUNTY, MARYLAND
TAX ID NO. 09-02-002200

Part No 2

From a review of the land records of Baltimore County, it appears that the house at 6601 Loch Hill Road was constructed in 1945/46 and was first conveyed on 3/21/46 by virtue of a deed recorded in Liber RJS No. 1435, folio 506, from George Blome, et al, to John H. & Alie M. Ingle. Subsequent conveyances of the subject property were as follows:

6/27/47 by a deed recorded in Liber JWB No. 1579, folio 91
John H. & Rosalie Ingle
to
Sadie B. Stewart, unmarried
8/12/52 by a deed recorded in Liber GLB No. 2155, folio 382
Wyllie Ritchey, et al, Trustees
to
Albert E. & Ethie M. Barker
4/4/75 by a deed recorded in Liber ENK, Jr. No. 5519, folio 613
Ethie M. Barker, Widow
to
John T. & Mary S. Long
8/17/79 by a deed recorded in Liber ENK, Jr. No. 6067, folio 658
John T. & Mary S. Long
to
James J. & Mildred O. O'Connor

According to the assessment records of the State Department of Assessments and Taxation this property has always been assessed and taxed as a single family dwelling. In 1972, the then owner of the subject property appealed the assessment and met with the assessor; there is nothing in the assessment records to indicate that the owner or the assessor ever discussed the existence and/or use of more than one dwelling unit in the subject property. Per the assessment records, the lot size is 6084 square feet.

Other properties in the immediate vicinity of the subject property were transferred between 1977 and 1982, but none sold for more than \$72,300, to wit:
6602 Loch Hill was conveyed 6/82 for \$72,300 (see deed in Liber No. 6610, folio 772)
6603 Loch Hill was conveyed 7/80 for \$67,500 (see deed in Liber No. 6182, folio 139)
6607 Loch Hill was conveyed 7/80 for \$53,000 (see deed in Liber No. 6181, folio 246)
6609 Loch Hill was conveyed 11/77 for \$53,000 (see deed in Liber No. 5834, folio 83)
6610 Loch Hill was conveyed 5/77 for \$50,000 (see deed in Liber No. 5747, folio 770)

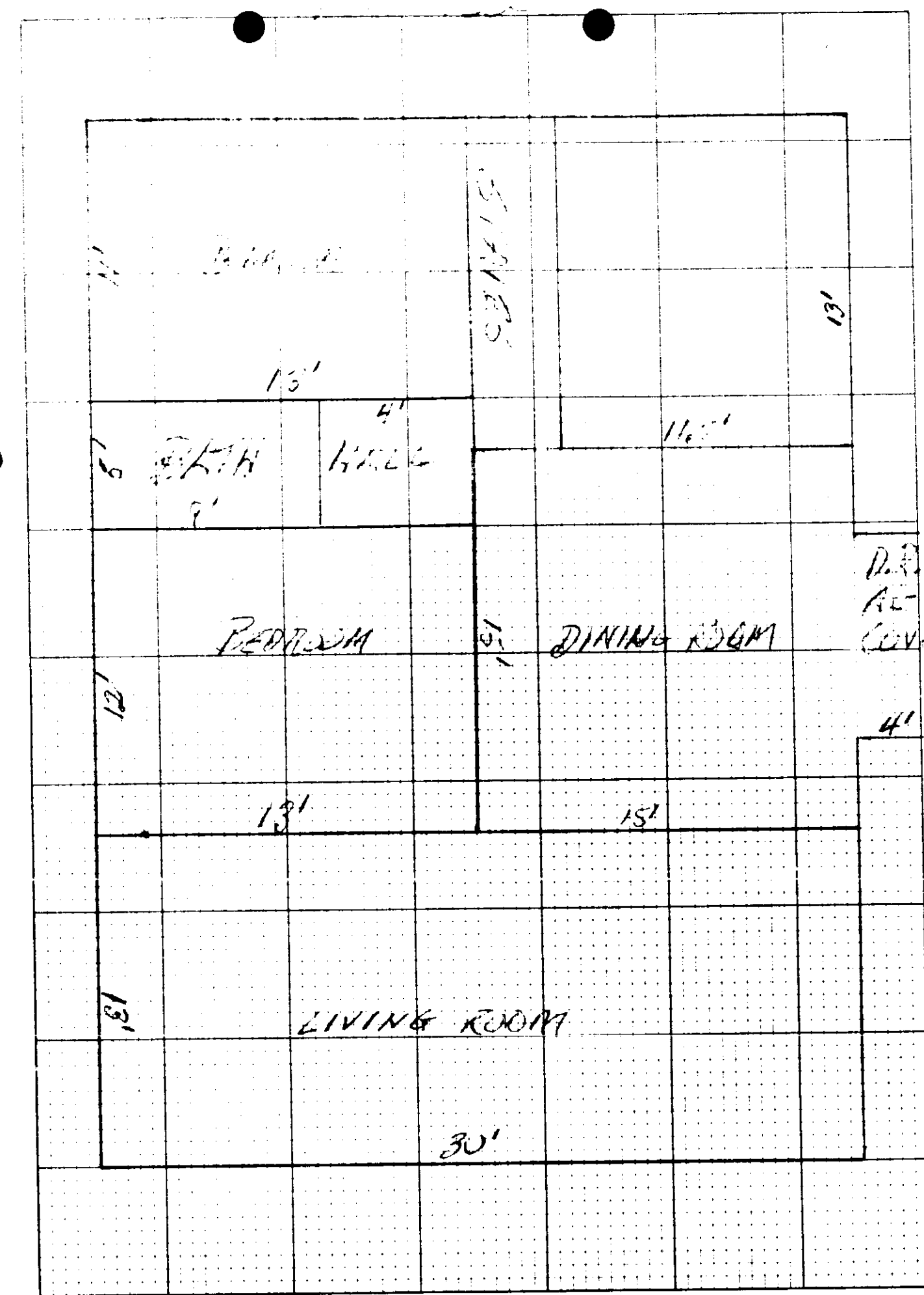
THE SENTINEL TITLE
CORPORATION

JAMES F. X. COSGROVE, ESQ.
Vice President

THE CHARLES TOWSON BUILDING
1106 GENUINWORTH DRIVE
SUITE 401
TOWSON, MARYLAND 21204

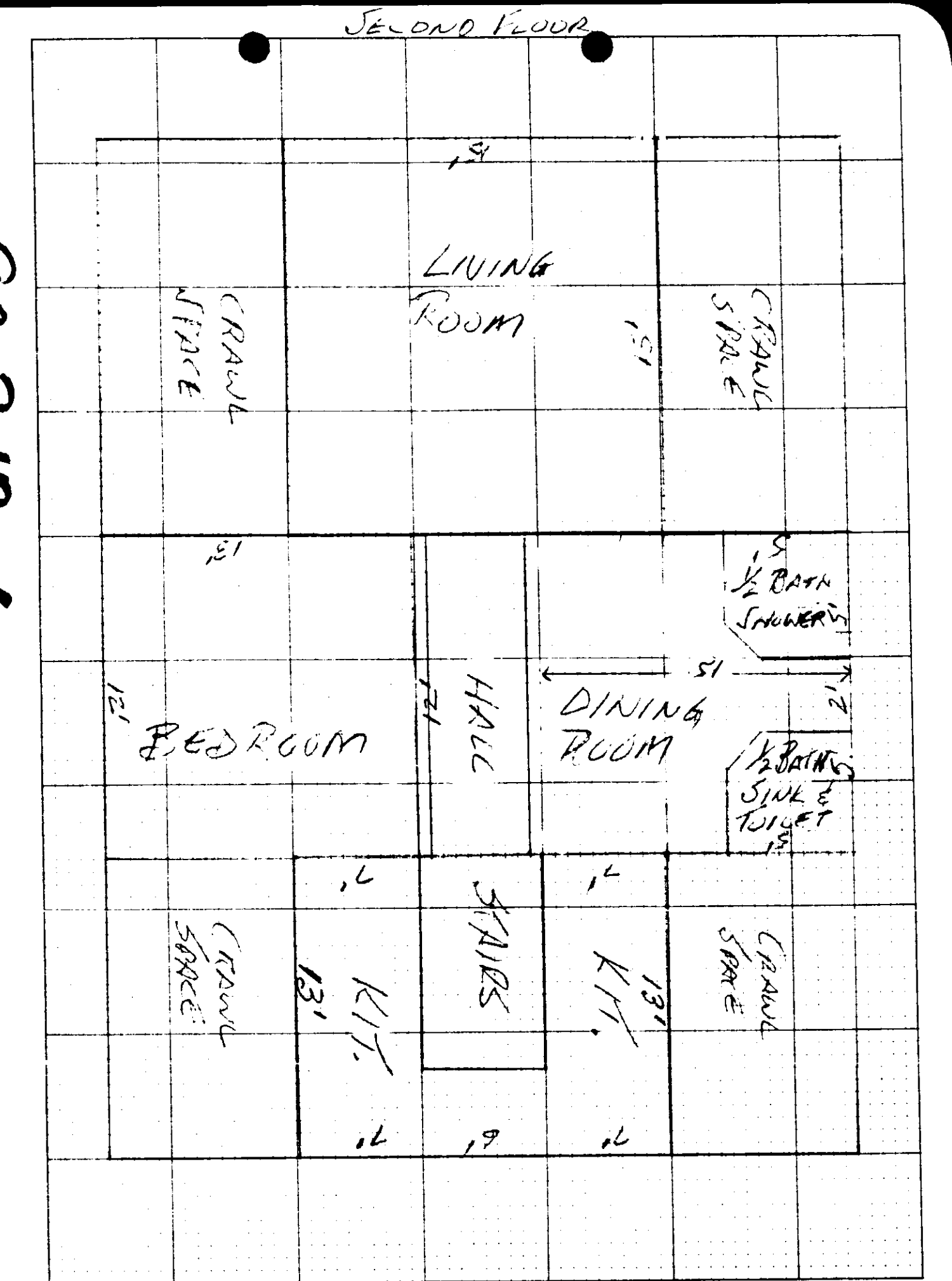
(301) 321-0800
FAX (301) 327-5284

92-249-X



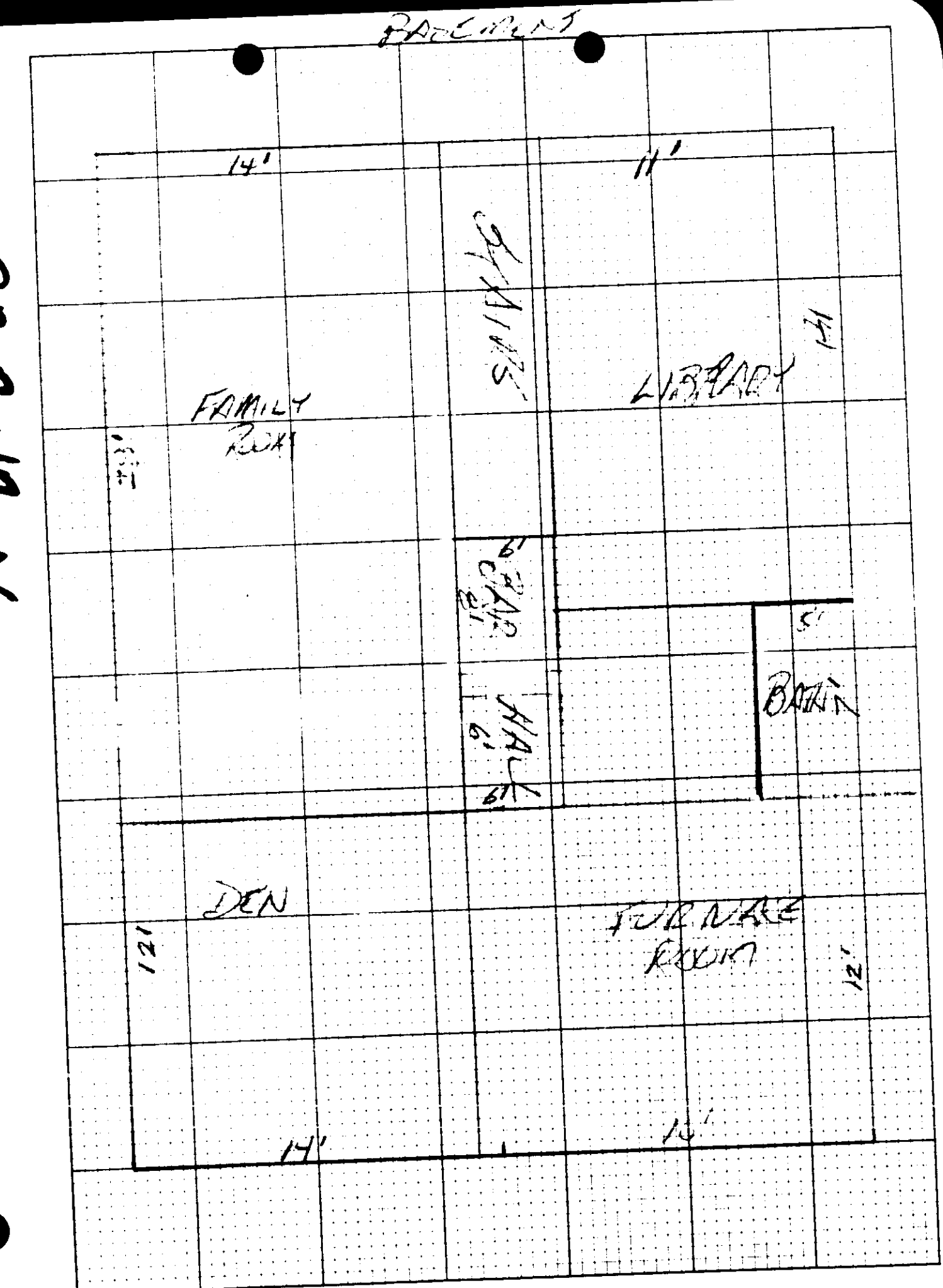
22-115 CROSS-SECTION 10 SQUARES TO INCH 6601 LOCH HILL RD - 31 260

92-249-X



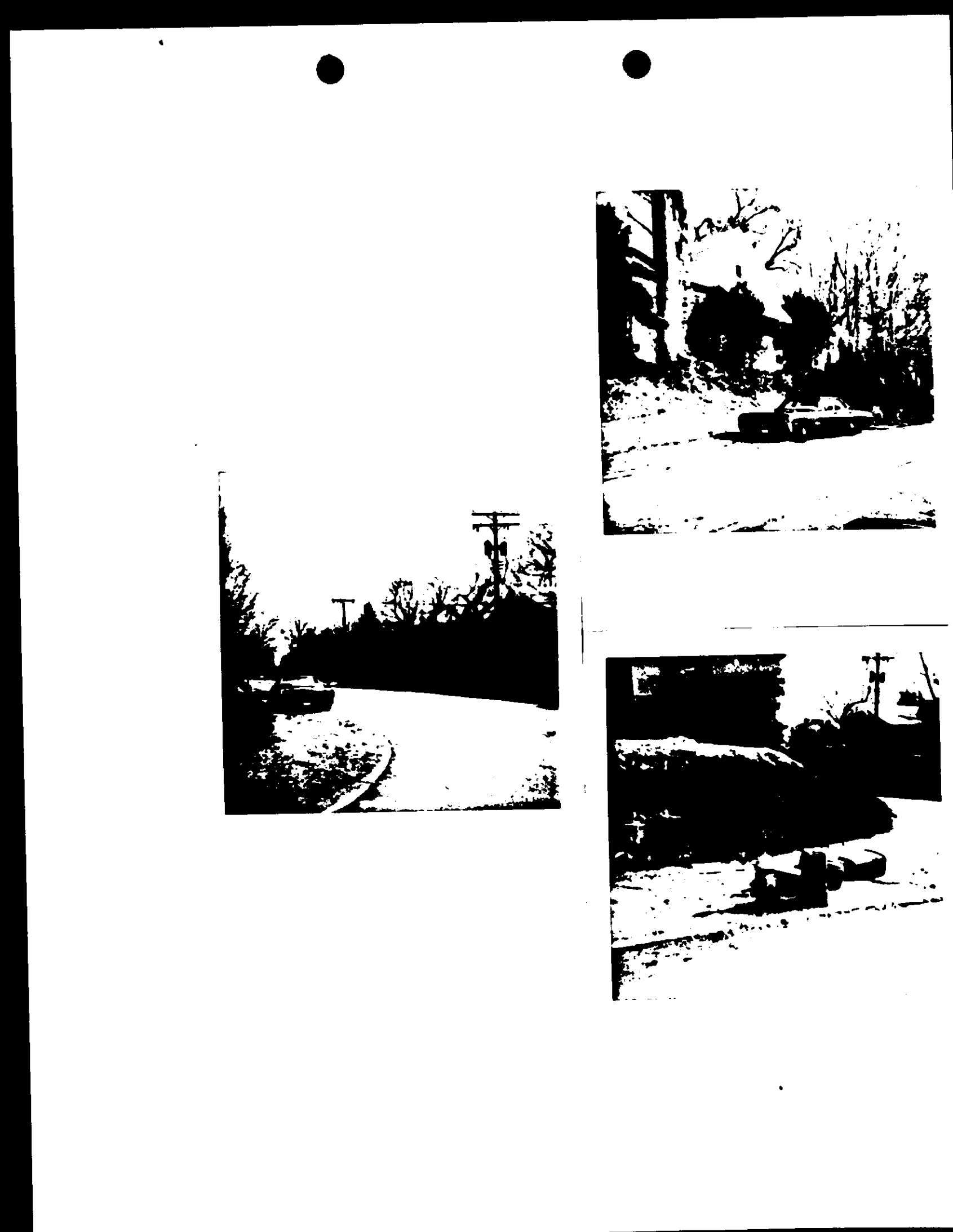
22-115 CROSS-SECTION 10 SQUARES TO INCH 6601 LOCH HILL RD. 260

92-249-X



22-115 CROSS-SECTION 10 SQUARES TO INCH

260



TO: Zoning
Commissioner
#211A

Photographs
Current map



